

Article 3.

Contests.

§ 120-10: Repealed by Session Laws 2005-3, s. 1, effective March 10, 2005.

§ 120-10.1. Contesting a seat.

Except as otherwise provided by rules of the house, a contest of the qualifications as a candidate or election of a member of the House of Representatives or the Senate under Article II, Section 20 of the Constitution shall be conducted in accordance with the provisions of this Article. (2005-3, s. 2.)

§ 120-10.2. Definitions.

As used in this Article, the following terms mean:

- (1) Clerk. – The Principal Clerk of the house in which the election of the seat is being contested.
- (2) Committee. – The Committee on Rules of the appropriate house unless, by rule, the house has designated another committee to hear contests.
- (3) Contest. – A challenge to the apparent election of a member of the General Assembly or a request to determine an undecided election to a seat of the General Assembly in accordance with the provisions of this Article.
- (4) Contestant. – An unsuccessful candidate in an election to which this Article applies who initiates a contest.
- (5) Contestee. – A candidate in an election to which this Article applies who is not a contestant.
- (6) Notice of intent. – The notice required to initiate a contest in accordance with the provisions of this Article.
- (7) Unsuccessful candidate. – A candidate for an elective office to which this Article applies who has not been issued a certificate of election. (2005-3, s. 2.)

§ 120-10.3. Initiating a contest.

(a) Who May Initiate. – A contest may be initiated only by a contestant by the filing of a written notice of the intent to petition for a contest in accordance with this section.

(b) When May Initiate. – The notice of intent may be filed no earlier than the date provided in G.S. 163A-1172 for the canvass by the board of elections with jurisdiction for the office under G.S. 163A-1171. The notice of intent must be filed no later than the latter of: (i) 10 days after a certificate of election has been issued, or (ii) 10 days after the conclusion of the election protest procedure under Part 4 of Article 20 of Chapter 163A of the General Statutes, but in no event may a contestant initiate a contest later than 30 days after the convening of a regular or special session of the General Assembly next after the election.

(c) Content of Notice. – A notice of intent shall state the grounds for the contest. The grounds shall be either or both of the following:

- (1) Objections to the eligibility or qualifications of the contestee as a candidate in the election based on specific allegations.
- (2) Objections to the conduct or results of the election accompanied by specific allegations that if proven true would have a probable impact on the outcome of the election.

The notice of intent shall also state that a contestee shall file an answer to the notice of intent in accordance with G.S. 120-10.4. The notice of intent shall be signed by the contestant and shall be verified in accordance with Rule 11(b) of the Rules of Civil Procedure. (2005-3, s. 2; 2017-6, s. 3.)

§ 120-10.4. Answering a notice of intent.

Within 10 days after service of the notice of intent on a contestee, a contestee shall file a written answer with the clerk. The contestee's answer shall admit or deny the allegations on which the contestant relies, or state that the contestee has no knowledge or information concerning an allegation which shall be deemed denial, and state any other defenses, in law or fact, on which the contestee relies and any different or additional issues the contestee wants considered. The answer shall be signed by the contestee and shall be verified in accordance with Rule 11(b) of the Rules of Civil Procedure. The failure to file an answer shall be deemed to be a general denial of the allegations. (2005-3, s. 2.)

§ 120-10.5. Filings and service.

The notice of intent to contest shall be filed by the contestant with the clerk and copies thereof served by the contestant on the contestee as provided under Rule 4(j)(1) of the Rules of Civil Procedure. Proof of service shall be filed with the clerk in accordance with G.S. 1-75.10. The answer, petition, and any reply and copies thereof shall be filed with the clerk, and copies shall be served on the opposing party or the opposing party's counsel, if any, in the manner prescribed by Rule 5 of the Rules of Civil Procedure. (2005-3, s. 2.)

§ 120-10.6. Discovery.

(a) Depositions. – After service of the notice of intent, any party, after five days notice to the other party or parties may take depositions to sustain or invalidate the election. The contestant shall complete the taking of depositions to submit with the contestant's petition at any time within 20 days following the date of service of the notice of intent, and a contestee shall complete the taking of the contestee's depositions within 30 days following the date of service of the notice of intent on the contestee. By written stipulation of the parties, the testimony of any witness may be filed in the form of an affidavit by the witness within the same time limitations prescribed for the taking of depositions. Every deposition shall be taken before a person authorized by law to administer oaths, who shall certify and seal the deposition in the same manner as in judicial civil proceedings and file the same with the clerk.

(b) Witnesses. – Subpoenas for witnesses in a contest shall be issued upon the application of either party or upon motion of the committee under the same procedures as under Article 5A of this Chapter and shall be enforced as provided under G.S. 120-19.4. Witnesses shall be entitled to the same allowances and privileges, and be subject to the same penalties, as witnesses summoned to attend the courts. (2005-3, s. 2.)

§ 120-10.7. Petitions.

(a) Filing. – A written petition shall be filed by the contestant with the clerk within 40 days following the date of service of the notice of intent. The petition shall set forth the facts and arguments supporting the case of the contestant. A contestee may file a written reply to the petition within five days following its service on the contestee.

(b) Affidavits. – No affidavit may be made a part of, or filed in support of, a petition or reply thereto unless the affidavit has previously been filed with the clerk, pursuant to the written stipulation of the parties or their counsel, on or before the date established by G.S. 120-10.6 for the completion of the taking of depositions by the proponent of the affidavit. (2005-3, s. 2.)

§ 120-10.8. Referral to committee.

(a) Referral. – The clerk shall refer the notice, answer, petition, reply, depositions, and affidavits to the committee, which documents shall constitute part of the record in the contest. The committee shall hear the contest and conduct such investigation as has been directed by resolution of its house.

(b) Procedure. – The committee shall set a schedule for taking depositions and receiving affidavits. The committee may consider the contestant's and contestee's recommendations for the procedural schedule. The committee may hold hearings and may compel the attendance of witnesses and the production of documents in its inquiry in accordance with Article 5A of this Chapter. The committee may accept the filing of briefs. The committee may order the recount of the ballots in the election and may seek and obtain the assistance of the Bipartisan State Board of Elections and Ethics Enforcement in the interpretation and counting of ballots.

(c) Compel Discovery. – No witness in a contest shall be excused from discovering whether the witness voted in the election that is the subject of the contest or the witness's qualification to vote, except as to the witness's conviction for any offense which would disqualify the witness from voting. If the witness was not a qualified voter, the witness shall be compelled to discover for whom the witness voted; but any witness making such discovery shall not be subject to criminal or penal prosecution for having voted in the election.

(d) Report. – The committee shall report its findings as to the law and the facts and make recommendations to the house for its action. (2005-3, s. 2; 2017-6, s. 3.)

§ 120-10.9. Basis for decision.

(a) Eligibility and Qualification. – If the contest is as to the eligibility or qualifications of the contestee, the house shall determine if the contestee is eligible and qualified. If it determines that the contestee is not eligible or not qualified, it shall order a new election.

(b) Conduct or Results of Election. – If the contest is as to the conduct or results of the election, the house shall determine which candidate received the highest number of votes. If it can determine which candidate received the highest number of votes, it shall

seat that person as a member of the house. If it cannot determine which candidate received the highest number of votes, it may order a new election, or may order such other relief, as may be necessary and proper. If it determines that two or more candidates shall be equal and highest in votes, the provisions of G.S. 163A-1176 shall apply. (2005-3, s. 2; 2017-6, s. 3.)

§ 120-10.10. Jurisdiction.

A contest of any election held at the same time and place as members of the General Assembly are elected shall be considered by the newly elected house. Any other contest shall be heard by the house sitting at the time of the election. (2005-3, s. 2.)

§ 120-10.11. Judicial proceedings abated.

Notwithstanding any other provision of law, upon the initiation of a contest under this Article, any judicial proceedings involving either the contestant or the contestee encompassing the issues set forth in the notice of intent or an answer thereto concerning the election that is the subject of the contest shall abate. The clerk shall file a copy of the notice of intent and final determination with the court in any judicial proceeding pending prior to the filing of the notice of intent. (2005-3, s. 2.)

§ 120-10.12. Determination of house not reviewable.

The decision of one of the houses of the General Assembly in determining a contest pursuant to this Article may not be reviewed by the General Court of Justice. (2005-3, s. 2.)

§ 120-10.13. Bad faith costs assessed.

The prevailing party in any contest may recover that party's costs incurred in conjunction with the contest in a civil action, upon a showing that the other party filed, pursued, maintained, or defended the contest in bad faith and without substantial justification. (2005-3, s. 2.)

§ 120-10.14. Applicability.

This Article applies only to a general or special election and does not apply to a primary or any other part of the nominating process. (2005-3, s. 2.)

§ 120-11: Repealed by Session Laws 2005-3, s. 1, effective March 10, 2005.